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RQ-188

ID# 13566
mJ

September 12, 1991

Mr. Dan Morales
Attorney General of Texas
Supreme Court Building
Austin, Texas 78701

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SEP 12 91

Opinion Committee

Dear General Morales:

I write to request an Attorney General's opinion construing the Texas Racing Commission's authority to reinstate Class 2 racetrack licenses under §6.19 of the Texas Racing Act (Article 179e, V.T.C.S.). That section requires the Texas Racing Commission to reinstate a Class 2 racetrack license that was revoked by the Commission before September 1, 1991, provided the "licensee" applies for reinstatement before January 1, 1992. The section restricts the Commission's ability to revoke or suspend a reinstated license and provides that a reinstated license expires on the second anniversary of the date the license was reinstated.

This section was added to the Texas Racing Act in H.B. 2263, which was adopted by the Legislature during May, 1991, and which took effect in August, 1991. Although the language of the section appears very straightforward, a problem arises because *the Commission has never revoked a Class 2 license*. In 1989, the Commission granted seven Class 2 licenses for horse racetracks around the state. During the renewal process in 1990, four licenses were renewed, two licenses were not renewed, and one racetrack withdrew its renewal application. Of the four licenses that were renewed, three racetracks have opened and one voluntarily surrendered its license shortly after renewal when its plans for financing the racetrack fell through.

My questions are these:

1. Is the Commission authorized to reinstate a Class 2 license that was not revoked *per se*, but was lost or surrendered by the licensee through another means and, if so, are all of the above-described licenses eligible for reinstatement?
2. Is the Commission authorized to conduct a background investigation of new owners of the racetrack brought in as a result of new financing and deny reinstatement of the license based on grounds for denial under §6.06 of the Texas Racing Act?
3. Is the Commission authorized to adopt rules to administer this section?

First Question

The issue involved in the first question is whether the Legislature intended the word "revoked" to encompass other situations in which a license has been lost. Neither the Texas Racing Act nor the Administrative Procedure and Texas Register Act define the term. One line of cases holds that for a plain and unambiguous statute, it is inappropriate to resort to rules of statutory construction. Ex parte Roloff, 510 S.W.2d 913 (Tex. 1974); Cail v. Service Motors, 660 S.W.2d 814 (Tex. 1983). Section 6.19 appears to be very plain - it is the effect of the section which is unclear. Another line of cases states that the goal is to effectuate legislative intent and if this intent can be ascertained from the statute, the courts must construe the statute in a manner that will enforce the intent, even if it is not entirely consistent with the strict letter of the statute. Crimmins v. Lowry, 691 S.W.2d 582 (Tex. 1985); State v. Terrell, 588 S.W.2d (Tex. 1979); Lunsford v. City of Bryan, 297 S.W.2d 115, 156 Tex. 520 (1957).

Further, a statute is not to be construed as to require a foolish or absurd result unless there is no alternative interpretation. Crosland v. Texas Employment Commission, 550 S.W.2d 314 (Tex. Civ. App. - Dallas, 1977), writ ref'd n.r.e. However, a court will not correct errors or omissions of the Legislature if the statutory provisions are reasonable when read literally. Sexton v. Mount Olivet Cemetary Assn., 720 S.W.2d (Tex. Civ. App. - Austin, 1986), writ ref'd n.r.e.; Attorney General Opinion No. JM-1171 (1990).

In my opinion, the legislative intent is difficult to ascertain. One might assume that the Legislature intended §6.19 to be a mechanism for certain Class 2 "licensees" to regain their licenses for a limited time to secure proper financing for the racetrack, without the expense and difficulty of applying for a new license. However, because the reinstated license expires after only two years, the most a reinstated license does is postpone the license application process.

The Commission has no position on this issue; rather, its concern is whether it has the authority to consider the denial of a renewal, or a voluntary surrender of a license, a "revocation" for purposes of this section.

Second Question

Reinstatement of a racetrack license appears to be automatic on application of the "licensee" for reinstatement. Once the former licensee applies for reinstatement, no additional documents or fees need be submitted and no hearing need be held. It is likely that a holder of a reinstated license will seek out new equity owners to provide a portion of the financing for the enterprise. Under §6.031 of the Texas Racing Act, the Commission is required to have a complete background investigation done on any person owning an interest in or exercising control over an applicant for a racetrack license. Section 6.031 was added to the Texas Racing Act in H.B. 2263, although the text of the section also appeared in S.B. 15 from the 2nd Called Session of the 69th Legislature, which enacted the Texas Racing Act originally. (It was codified by Vernon's as Article 179e-3.)

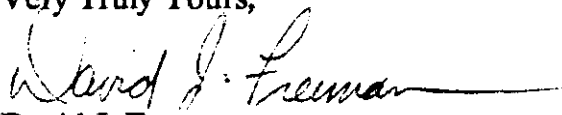
Section 6.19 contemplates that some grounds might exist for the revocation or suspension of a reinstated license. See §6.19(d). If the Commission is not authorized to deny the reinstatement of a license based on an unfavorable background investigation, the Commission is forced to reinstate the license, then institute revocation proceedings.

Third Question

In my opinion, the Commission must be able to adopt rules to administer this section pursuant to §3.02 of the Texas Racing Act. This would permit the Commission to adopt a deadline for filing an application for a "permanent" license to ensure a continuity of licensure before the reinstated license expires.

We have already received a letter from one of the former licensees requesting reinstatement. I appreciate your prompt attention to this question. If you need any additional information regarding this request, please call Paula Cochran Carter, General Counsel for the Texas Racing Commission, at 794-8461.

Very Truly Yours,



David J. Freeman
Executive Secretary

DJF/pcc:ng

c: Texas Racing Commission
The Honorable Delwyn Jones
The Honorable Leonard Von Dohlen
Jean Arnett
Jack Lee